

The opinion in support of the decision being entered today was *not* written for publication in and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WILLIAM A. HALL

Appeal 2006-3068
Application 10/721,299
Technology Center 3700

Decided: April 11, 2007

Before TERRY J. OWENS, JENNIFER D. BAHR, and ROBERT E. NAPPI,
Administrative Patent Judges.

OWENS, *Administrative Patent Judge.*

DECISION ON APPEAL

The Appellant appeals from a rejection of claims 1-20, which are all of the pending claims.

THE INVENTION

The Appellant claims a food packaging apparatus and method. Claims 1 and 14 are illustrative:

1. A food packaging closure apparatus comprising:
a tubular body having a length with opposite first and second ends, the second end of the tubular body having means for attaching the body second end to packaging of a food product; and,
a lid that is removably attachable to the first end of the tubular body.

14. A method of preserving a food product in food packaging that has a food packaging opening, the method comprising:
providing a tubular body that has a length with opposite first and second ends;
positioning the second end of the tubular body on the food product so that the tubular body extends around the food packaging opening;
providing a lid that is removably attachable to the first end of the tubular body; and
removably attaching the lid to the first end of the tubular body.

THE REFERENCE

Peebles	US 5,964,365	Oct. 12, 1999
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THE REJECTIONS

The claims stand rejected as follows: claims 1-5, 7-9, 11-14, 16-18 and 20 under 35 U.S.C. § 102(b) as anticipated by Peebles; claims 6 and 15 under 35 U.S.C. § 103 as obvious over Peebles; and claims 10 and 19 under 35 U.S.C. § 103 as obvious over Peebles in view of the Appellant's admitted prior art.

OPINION

We affirm the aforementioned rejections.

We limit our discussion to the claims separately argued by the Appellant, i.e., claims 1, 6-8, 14 and 15 (Br. 5-8).¹ See 37 C.F.R. § 41.37(c)(1)(vii)(2004).

¹ The Appellant mentions claims 2 and 16 but does not provide a substantive argument as to their separate patentability (Br. 7-8).

Claim 1

Pebbles discloses “a reusable transport and containment system designed for the easy transportation and storage of pans or dishes used primarily in the preparation, cooking, presentation, and storage of foods” (col. 1, ll. 6-9). The system includes a collar (20) that 1) has a generally horizontal interior ledge (40) that allows a pan’s or dish’s rim or flange (38) to seat within the collar such that the collar supports the rim or flange, 2) engages a lid (60) to cover the pan or dish and contain its contents, and 3) insulates the pan’s or dish’s contents while shielding the food handler’s hands from the pan or dish and its contents (col. 1, ll. 29-37; fig. 1). The collar “includes a carrying flange or grip [26], giving the food handler the ability to more easily carry a hot or cold pan or dish” (col. 1, ll. 38-40). The collar can be used with “any of a variety of vessels that incorporate a rim, flange, or lip that can engage the collar ledge” (col. 2, ll. 53-55). Preferably the vertical portion (42) of the collar engages the side walls (34) and/or end walls (36) of the pan or dish (col. 3, ll. 62-64; fig. 5A).

The Appellant argues that “[t]he Peebles reference discloses a lid and collar system that is specifically designed for use with a pan or a dish, and not with a packaged food product as required by claim 1. The pan or dish disclosed by the Peebles reference is a cooking vessel, and not food packaging” (Br. 6). Peebles’ pan or dish can be for food preparation, presentation and storage in addition to cooking (col. 1, ll. 8-9). Regardless, because the closure apparatus claimed in claim 1 does not include the food packaging, the relevant question is whether Peebles’ collar is capable of supporting a packaged food product. Peebles’ figures 1 and 5A indicate that the collar is capable of supporting any packaged food product having a flange-shaped portion (38) that is capable of seating on horizontal ledge 40.

The Appellant argues that the “means for attaching” means plus function language in claim 1 requires identity of claimed function, and “[t]he Peebles reference contains no suggestion of a food packaging closure apparatus having identity of the claimed function of ‘attaching the body second end to packaging of a food product’” (Br. 6). Such means include the corresponding structure disclosed in the Appellant’s Specification and equivalents thereof. *See In re Donaldson*, 16 F.3d 1189, 1195, 29 USPQ2d 1845, 1850 (Fed. Cir. 1994). The Appellant’s means for attaching the second end (34; fig. 1) to the packaging is a snug fit between the second end and the packaging (Specification 7: 1-15). Peebles’ engagement between the vertical portion of the collar and the side and/or end walls of the pan or dish (col. 3, ll. 62-64) is an equivalent structure to that of the Appellant.

The Appellant argues that Peebles’ vertical wall 42 is not an equivalent structure because it is rigid and, therefore, does not compress the pan to which it is attached (Reply Br. 2-3). Peebles does not state that the vertical wall is rigid. If it is rigid, then like the Appellant’s embodiment in which the tubular body is somewhat rigid (Specification 7: 11-15), Peebles’s vertical wall is capable of compressing a compressible package.

Claims 7 and 8

Claim 7 depends from claim 1 and requires that the tubular body has a rim extending around the first end of the tubular body and projecting outwardly from the tubular body’s exterior surface. Claim 8 depends from claim 7 and requires that the lid has a lip that engages over the rim of the tubular body to removably attach the lid to the first end of the tubular body.

The Appellant argues that Peebles’ collar ridge 24 does not project outwardly from a tubular body exterior surface, and that Peebles does not disclose

a lid having a lip that engages over collar flange 26 (Br. 7). The Appellant argues that Peebles' collar ridge and collar flange are two separate structures, whereas the Appellant's claim 8 requires a single rim that both projects outwardly from the tubular body and engages the lid (Reply Br. 3-4). Peebles' collar flange 24 and collar ridge 26 both are parts of a single rim-like top portion of the collar (Fig. 5A). Consequently, together they reasonably can be considered a rim that projects outwardly from the collar body (collar flange 26) and engages over the lip (collar ridge 24).

Claim 14

The Appellant argues that without prior knowledge of the Appellant's claimed invention, one of ordinary skill in the art would not have considered Peebles' pan or dish to be food packaging (Br. 7-8). During patent prosecution, claims are to be given their broadest reasonable interpretation consistent with the specification, as the claim language would have been read by one of ordinary skill in the art in view of the specification. *See In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); *In re Sneed*, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983). The Appellant's Specification does not define "food packaging". The Specification discloses that it was known to wrap foods in plastic packaging that tightly conforms to the exterior surface of the food product (p. 1, ll. 9-11), but the Specification does not limit the claim term "food packaging" to that type of package. Hence, we use the broadest relevant customary meaning of "packaging" which is "a covering wrapper or container".² Peebles' pan or dish having the lid thereon covers and contains food and, therefore,

² *Webster's New Collegiate Dictionary* 822 (G. & C. Merriam 1973).

reasonably can be considered “food packaging” as that term is used by the Appellant.

Claims 6 and 15

Independent apparatus claim 6 has limitations similar to those in claim 1 and further requires that the second end of the tubular body is resilient and engagable around the food product to attach the tubular body to the food product. Method claim 15 depends from claim 14 and requires making the tubular body of a resiliently stretchable material and resiliently stretching the second end of the tubular body around the food product.

The Appellant argues that Peebles does not disclose that the collar is resilient and is stretched around the pan or dish (Br. 9). Peebles is silent as to whether the cover is rigid or resilient. Peebles’ disclosure that the collar and lid are molded (col. 3, ll. 33-35) indicates that they are plastic. Because Peebles does not require the cover to be either rigid or resilient, the reference would have fairly suggested, to one of ordinary skill in the art, making the cover out of any of the known rigid or resilient plastics, provided that the plastic is sufficiently rigid to support the pan or dish. Peebles’ disclosure that the collar’s vertical portion engages the pan’s or dish’s side and/or end walls (col. 3, ll. 62-64) would have fairly suggested, to one of ordinary skill in the art, both the rigid engagement of a rigid plastic and the stretchable engagement of a resilient plastic.

Conclusion

For the above reasons we are not convinced of reversible error in the examiner’s rejections.

DECISION

The rejections of claims 1-5, 7-9, 11-14, 16-18 and 20 under 35 U.S.C. § 102(b) over Peebles, claims 6 and 15 under 35 U.S.C. § 103 over

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Peebles, and claims 10 and 19 under 35 U.S.C. § 103 over Peebles in view of the Appellant's admitted prior art, are affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

JRG

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THOMPSON COBURN, LLP
ONE US BANK PLAZA
SUITE 3500
ST LOUIS, MO 63101